

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

OA

/2022

IN THE MATTER OF the Infrastructure Act 2019

AND

IN THE MATTER OF certain lands that comprise and adjoin the
Manihiki Airport

AND

IN THE MATTER OF the need for an order of the Court to allow
the construction of new infrastructure on
those lands

AN APPLICATION BY JOHN-MARY NIMETI NIMETI, as
Executive Officer of the Manihiki Island
Government acting as Infrastructure
Manager

Applicant

**APPLICATION FOR ORDERS PURSUANT TO SECTIONS 44
AND 47 OF THE INFRASTRUCTURE ACT 2019**

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TAKE NOTICE that the Applicant **WILL APPLY** to the High Court at Rarotonga on the day
of 2022 **FOR THE FOLLOWING ORDERS:**

- A. An Order, under sections 44(2) and 47 of the Infrastructure Act ("the Act"), to allow the Applicant as an agent of the Crown to proceed working by and through Infrastructure Cook Islands with the construction of new infrastructure on the island of Manihiki, namely, the proposed, substantial, upgrade and rebuilding of the Manihiki Airport.
- B. An Order that the terms and conditions (including financial terms and conditions) as to that work, the rights of access (of the infrastructure manager and of others) to be enjoyed in respect of the affected lands, both for construction and ongoing use of the infrastructure and the ongoing rights and interests in the lands be as more particularly set out in the draft Enduring Agreement filed with this Application.
- C. An Order that compensation be payable in the sum and manner set out in that Enduring Agreement.
- D. An Order as to directions as to service as contemplated by section 46(2) of the Act;

AND for such further orders as the Court think appropriate in the circumstances.

AND the Applicant will seek to have the Court, as contemplated by section 46(3) of the Act, request the Registrar to convene and conduct a meeting of the customary owners, with video conferencing capability to allow those customary owners who may be overseas, to attend and participate in such manner as the Court thinks appropriate in all the circumstances.

UPON THE GROUNDS:

- 1) In terms of section 45(2) of the Infrastructure Act 2019 ("the Act") the Applicant may install new infrastructure on land only in accordance with an Enduring Agreement entered into with the owner or owners of the land; or under an order of the Court made under section 47 of the Act.
- 2) The Applicant, as infrastructure manager for the Island of Manihiki has responsibilities under the Act, in respect of a proposed, substantial, upgrade and rebuilding of the Manihiki Airport.
- 3) The nature and extent of the upgrade and rebuild is such that the works are "new infrastructure" for the purposes of section 45(3) of the Act.
- 4) The Applicant is unable to enter into an enduring agreement concerning the affected lands; specifically, agreement has been reached with the on-island (Manihiki) owners but, the nature, extent and substantial nature of the resulting asset is such that it is desirable to commit *all owners*.
- 5) The Applicant is not aware of any dispute that would require dispute resolution under section 60 of the Act; there is consensus among customary landowners on the island as to the new infrastructure.
- 6) However:
 - a) the affected lands are customary land;
 - b) it is not feasible or practical to identify and communicate with all possible owners of the lands, wherever in the world they may be and
 - c) as to absentee owners there must be doubt as to the present nature of their customary claim or entitlement to the lands or any of them.
- 7) the construction of the new infrastructure is reasonably necessary and given that the affected lands currently host and adjoin the existing runway, the use of alternative land would involve the Applicant in unreasonable costs or technical difficulties:
- 8) it is reasonable and appropriate in the circumstances that the Court make the order requested and, specifically:
 - a) the Applicant has taken all reasonable steps to obtain the consent of all owners required to be served; and
 - b) has complied with other relevant requirements of this Act; and

c) the conditions of the order sought are fair and reasonable to all parties.

9) set out in the affidavit of the Applicant filed herein in support.

This application is made in reliance on sections 46(1)(c) and 47 of the Infrastructure Act 2019.

DATED at Rarotonga this 25th day of August 2022



Counsel Moving

TO: The Registrar of the High Court at Rarotonga
AND TO:

This notice of application is filed by Timothy Paul Arnold, solicitor for the Applicant, whose address of service is at the offices of Tim Arnold P.C., Ingram House, Ruatonga, Rarotonga.